



MEMORANDUM

To: Laura Jensen, Program Manager
Sacramento-San Joaquin Delta Conservancy

From: John Cain, Conservation Director
American Rivers

Date: March 14, 2017

Subject: Submission of Required Materials for the Paradise Cut Flood and Conservation Easement Acquisition Project to the Delta Conservancy

In support of the San Joaquin County Resource Conservation District's (RCD) grant application, American Rivers worked with the RCD to assemble the attached documents requested by the Delta Conservancy.

Exhibit 1. Acquisition Table

The RCD has secured willing seller letters from the owners of the Borges/Machado property, Mr. Frank Borges and Mr. Ron Machado. Mr. Borges and Mr. Machado jointly control ownership interests in three parcels located within the Paradise Cut proposed flood bypass alignment (see Exhibit 4). The three Borges/Machado parcels comprise 1,170 acres. The parcels border the San Joaquin River and represent 60 percent of the Paradise Cut Flood Bypass Acquisition Area. These parcels are not only key for the long-term development of a flood bypass, they are also prime habitat for Swainson's hawk and susceptible to conversion to perennial crops that would render the property unsuitable for Swainson's hawk and other native species. Exhibit 1 shows the estimated acquisition costs associated with purchasing the Borges/Machado property as well as all other properties in the Paradise Cut Flood Bypass Acquisition Area.

In addition to the Borges/Machado property, American Rivers is also working with the RCD to move forward with acquisition of the other properties in the Paradise Cut Flood Bypass Acquisition Area mentioned above (see Exhibit 4). The RCD has also already obtained an additional letter of intent from Mr. John Kist. Since the RCD based the original budget and cost share commitment submitted to the Delta Conservancy on the assumption the RCD and its partners would facilitate the purchase of all properties in the Acquisition Area, we have included a budget for those other properties in Exhibit 1. The RCD is now only asking the Delta Conservancy for funds to purchase the Borges/Machado property because the total costs of these three parcels exceeds the amount originally requested. The schedule for completing the appraisal and acquisition is based on acquisition of the Borges/Machado property.

American Rivers is confident that state and local sources will provide the funding necessary to purchase flood and conservation easements across the entire Paradise Cut Flood Bypass Acquisition Area. The San Joaquin County HCP has indicated that they have funding to purchase conservation easements across several of the properties in the acquisition area, and the California Department of Water Resources has identified expansion of Paradise Cut as a priority in the 2017 Central Valley Flood Protection Plan Update. The Department of Finance

recently issued an emergency appropriation request for \$387 million in additional Proposition 1 funds to invest in flood system improvements. The request includes \$130 million for “systemwide” flood risk reduction projects, encompassing the Paradise Cut Flood Bypass Alignment and the Yolo Bypass.

Based on our estimate of value, the Delta Conservancy’s \$2 million grant, combined with other state funds, will help purchase flood and conservation easements on 1,170 acres. The Delta Conservancy’s \$2 million contribution is the catalyst for the entire Paradise Cut project which will ultimately reduce flood risk for more than fifty thousand people and more than ten thousand acres of farmland. It will protect important agricultural habitat for Swainson’s hawk, and will create the potential to restore salmon rearing habitat in the lower San Joaquin River.

Exhibit 2. Copies of Willing Seller Letters

Copies of willing seller letters from Mr. Frank J. Borges and Mr. Edward A. Machado are attached. Mr. Machado is the authorized signatory for River Crest Ranches LP, which holds a fifty percent interest in parcels 239-130-04, 239-140-07, and 239-140-08. Mr. Borges owns the remaining fifty percent.

Exhibit 3. Estimation of Fair Market Value

With the RCD’s concurrence, American Rivers retained Bender Rosenthal to develop an estimate of the value of a flood and conservation easement on the Borges/Machado property (Exhibit 3) a formal appraisal of the value of flood and conservation easements on the Borges/Machado property, and an estimate of value of flood and conservation easements on all the properties in the acquisition area . As described in Exhibit 3, the estimated value of the Borges/Machado parcel is \$12,186,000, or \$10,415 per acre. Bender Rosenthal is currently working to complete a formal appraisal in the near future.

Exhibit 4. Acquisition Map (showing lands that will be acquired, including parcel lines and numbers)

The attached map shows the location of the three parcels owned by Borges and Machado, as well as the boundaries of the Paradise Cut Flood Bypass Acquisition Area in which the RCD and American Rivers are working to acquire easements on other properties.

Exhibit 5. CEQA Compliance: RCD Board Resolution finding project exempt and Notice of Exemption filed with the San Joaquin County Clerk

The RCD Board of Directors passed a resolution concluding that the proposed conservation and flood easement acquisition is exempt from CEQA, and the RCD’s General Counsel, Jennifer Spaletta, filed a Notice of Exemption (NOE) with the San Joaquin County Clerk. Both the resolution and the NOE are attached as Exhibit 5.

EXHIBIT 1

Acquisition Table

Acquisition Table

Please complete one form for each separate escrow.

| | | | | | |
|----------------------------------------------------------------------------------------|---------------------|---------------------------------|---------------------------------------------------------------------------|------------------------------------|-------------------------------------------------------------|
| Project Title: Paradise Cut Flood and Conservation Easement Acquisition Project | | | | | |
| Assessor's Parcel Number(s) | Acreage | Indicate Fee or Easement | Willing Seller Name and Address | | |
| 239-130-04; 239-140-07; 239-140-08 | 1,170 | Conservation and Flood Easement | Edward Machado and Frank Borges 11708 E Moncure Rd. Ripon, CA 95366 | | |
| ACQUISITION COST ESTIMATE | | | | | |
| | Total Costs | Delta Conservancy Grant | Other Funding Source (CDFW) | Other Funding Source (TBD*) | Other Funding Source (River Islands Settlement Fund) |
| A. Acquisition Cost (purchase price of real property) | | | | | |
| Estimated Fair Market Value of 239-130-04; 239-140-07; 239-140-08. | \$12,186,000 | \$2,000,000 | \$2,000,000 | \$8,186,000 | |
| Estimated Fair Market Value of all other Paradise Cut properties | \$8,800,000 | | | \$8,800,000 | |
| B. Project Costs | | | | | |
| Appraisal | | | | \$35,000 | \$70,000 |
| DGS approval of appraisal | | | | \$30,000 | \$30,000 |
| Preliminary Title Reports | | | | \$10,000 | \$10,000 |
| Due Diligence (<i>Phase 1, surveys, etc.</i>) | | | | \$30,000 | \$30,000 |
| Escrow Fees, Title Insurance, Closing Costs. | | | | \$30,000 | \$30,000 |
| Direct costs (<i>staff and consultants</i>) | | | \$30,500 | \$10,000 | \$144,783 |
| Other (<i>long-term maintenance endowment*</i>)) | | | | | \$120,000 |
| Total A | \$20,986,000 | \$2,000,000 | \$2,000,000 | \$16,986,000 | |
| Total B (For request to Conservancy, may not exceed 10% of Total A) | \$610,283 | | \$30,500 | \$145,000 | \$434,783 |
| Indirect (For request to Conservancy, may not exceed 20% of Total B) | \$91,531 | | \$4,564 | \$21,750 | \$65,217 |

| | | | | | |
|--------------------|---------------------|--------------------|--------------------|---------------------|------------------|
| Grand Total | \$21,687,814 | \$2,000,000 | \$2,035,064 | \$17,152,750 | \$500,000 |
|--------------------|---------------------|--------------------|--------------------|---------------------|------------------|

Acquisition Schedule

Completion Date

| | |
|--------------------------------------------------------------|-------------------|
| Complete appraisal and obtain DGS review | January 30, 2018 |
| Submit appraisal and purchase docs to Conservancy | February 28, 2018 |
| Open escrow & request advance into escrow | May 30, 2018 |
| Close escrow (submit final closing documents to Conservancy) | October 30, 2018 |

EXHIBIT 2

Copies of Willing Seller Letters



American Rivers
Rivers Connect Us®

January 12, 2017

Frank J Borges, et al
c/o Rivercrest Ranches LP
11708 E Moncure Rd
Ripon, CA 95366

Re: Offer to Purchase Conservation and Flood Easement along or in vicinity
of Paradise Cut in San Joaquin County, California

Dear Mr. Borges:

This letter proposes the terms and conditions under which American Rivers, Inc., a District of Columbia nonprofit corporation and national river conservation organization (“Grantee”), would purchase from Frank J. Borges, et al (“Grantor”) a perpetual conservation and flood easement and related rights (collectively, the “Conservation and Flood Easement”) covering approximately 1,170 acres of real property owned by Grantor, located in San Joaquin County, California, commonly known as Assessor’s Parcel Number(s) 239-130-04, 239-140-07 & 239-140-08, and more particularly described in Attachment A, attached hereto and incorporated herein by this reference (the “Conservation Site Property”), pursuant to and after execution of a definitive purchase and conveyance agreement (the “Agreement”).

1. Purposes, Terms and Form of Conservation and Flood Easement.

(a) The purposes of the Conservation and Flood Easement shall include each of the following, all as to be more particularly set forth in the form of a conservation and flood easement deed and agreement to be approved as provided in Section 4(b)(ii) below (the “Conservation and Flood Easement Deed”):

(i) Construction and operation of an enlarged Paradise Cut floodway across the Conservation Site Property, or portion thereof, including the construction and/or relocation of levees, as necessary;

(ii) Improvement of the natural or managed agricultural habitat for certain wildlife and fish species to the extent approved by Grantor; and

(iii) Preservation of the agricultural land values of the Conservation Site Property associated with certain crops and uses permitted under the terms of the Conservation and Flood Easement Deed. Grantee expects that such permitted crops and uses shall include annual row and field crops and/or livestock grazing.

(b) To accomplish such purposes, the Conservation and Flood Easement Deed shall establish certain covenants, restrictions and standards respecting the use and operation of the Conservation Site Property. The Conservation and Flood Easement Deed shall also provide for annual compliance monitoring inspections of the Conservation Site Property by Grantee and include enforcement rights of both Grantor and Grantee. Grantor shall not be responsible for any financial or land management responsibilities or burdens as a result of the Conservation and Flood Easement beyond those expressly set forth in the approved Conservation and Flood Easement Deed.

(c) Any use of the Conservation Site Property for a flood bypass pursuant to the Conservation and Flood Easement Deed would be solely in the event of the San Joaquin River reaching flood-stage levels.

(d) Grantee shall have the right to assign and transfer its interests under the Agreement and the Conservation and Flood Easement Deed to an entity or organization authorized to hold the Conservation and Flood Easement pursuant to California Civil Code Section 815.3, upon the reasonable approval of Grantor.

2. Purchase Price. Grantee, at its cost, intends to undertake to secure funds from the State of California for its acquisition of the Conservation and Flood Easement as contemplated herein. The purchase price (the "Purchase Price") to be paid by Grantee to Grantor for the Conservation and Flood Easement at the "Closing" (as defined and described below), shall be equal to the fair market value of the Conservation and Flood Easement, as determined by a written appraisal report prepared by licensed appraiser selected by Grantee (the "Appraisal"), and approved by Grantor, Grantee and the State of California by and through the California Department of General Services (or other applicable agency required by the State of California) (the "Agency"). The cost of the Appraisal shall be paid by Grantee.

3. Due Diligence Period. During the six (6) month period commencing on the full execution and delivery of the Agreement (the "Due Diligence Period"), Grantee, at its cost and expense, shall make any and all inspections, investigations, tests, studies, and surveys of the Conservation Site Property including, without limitation, title review, and studies relating to environmental risks and soil conditions of the Conservation Site Property including a Phase I Environmental Assessment (collectively, the "Due Diligence Inspections").

4. Conditions Precedent to Closing. The Closing will be conditioned upon the satisfaction of the following conditions precedent (collectively, the "Closing Conditions"):

(a) Grantor and Grantee shall have executed and delivered the Agreement;

(b) Prior to the expiration of the Due Diligence Period, each of the following shall have occurred:

(i) Grantor, Grantee and the Agency shall have approved the Appraisal;

(ii) Grantor, Grantee and the Agency shall have approved the final form of the Conservation and Flood Easement Deed; and

(iii) Grantee shall have completed its Due Diligence Inspections and approved the Conservation Site Property for purposes of the Conservation and Flood Easement;

(c) Grantor and Grantee shall have executed and deposited the approved Conservation and Flood Easement Deed into "Escrow" (as defined below); and

(d) The Agency shall have deposited into Escrow funds equal to the Purchase Price.

5. Escrow; Closing. Promptly upon the full execution and delivery of the Agreement, Grantee shall open an escrow (the "Escrow") with a title company acceptable to Grantor and Grantee. The closing (the "Closing") of the purchase and conveyance of the Conservation and Flood Easement as contemplated herein shall occur through Escrow as soon as possible upon satisfaction of the Closing Conditions as provided in Section 4 above on a date mutually acceptable to Grantor and Grantee. At and through the Closing, the approved Conservation and Flood Easement Deed shall be recorded in the Official Records of San Joaquin County, California, and the Purchase Price shall be paid to Grantor.

This letter is not legally binding and creates no rights or duties on the part of any party to it. This letter does not constitute an offer to enter into an agreement nor does it constitute a memorandum of agreement. This letter is provided solely as a means of negotiating between the parties. None of the parties to these negotiations shall incur any obligation or liability to the other unless and until the parties execute a formal written agreement. The parties are not obligated by this letter to negotiate in good faith to reach a final agreement, and shall not be liable for any expenses incurred or opportunities foregone by any other party in reliance on this letter.

If the terms and conditions set forth above are acceptable, please sign the enclosed copy of this letter in the space provided below, and forward such signed letter to my attention. Within ten (10) business days of our receipt of such signed letter, we shall prepare and provide to you for your review and consideration drafts of the Agreement and the Conservation and Flood Easement Deed.

January 12, 2017
Page 4

Thank you for courtesy and consideration. If you have any questions, please contact me or Steve Kritscher.

Very truly yours,



John Cain
Director, American Rivers

Attachment A: Legal Description of the Conservation Site Property

AGREED AND ACCEPTED on March 2, 2017.



Frank J. Borges

Attachment A to
Offer to Purchase
Conservation and Flood Easement

LEGAL DESCRIPTION OF THE CONSERVATION SITE PROPERTY

The real property referred to in this letter is located in San Joaquin County, California, and more particularly described as follows:

Assessor's Parcel Number(s) 239-130-04, 239-140-07 & 239-140-08



American Rivers
Rivers Connect Us®

January 12, 2017

Frank J Borges, et al
c/o Rivercrest Ranches LP
11708 E Moncure Rd
Ripon, CA 95366

Re: Offer to Purchase Conservation and Flood Easement along or in vicinity
of Paradise Cut in San Joaquin County, California

Dear Mr. Borges:

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3. Due Diligence Period. During the six (6) month period commencing on the full execution and delivery of the Agreement (the "Due Diligence Period"), Grantee, at its cost and expense, shall make any and all inspections, investigations, tests, studies, and surveys of the Conservation Site Property including, without limitation, title review, and studies relating to environmental risks and soil conditions of the Conservation Site Property including a Phase I Environmental Assessment (collectively, the "Due Diligence Inspections").

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If the terms and conditions set forth above are acceptable, please sign the enclosed copy of this letter in the space provided below, and forward such signed letter to my attention. Within ten (10) business days of our receipt of such signed letter, we shall prepare and provide to you for your review and consideration drafts of the Agreement and the Conservation and Flood Easement Deed.

January 12, 2017
Page 4

Thank you for courtesy and consideration. If you have any questions, please contact me or Steve Kritscher.

Very truly yours,



John Cain
Director, American Rivers

Attachment A: Legal Description of the Conservation Site Property

AGREED AND ACCEPTED on January 16, 2017.



~~Frank J. Borges~~

Ed Machado

EXHIBIT 3

Estimation of Fair Market Value

Kritscher & Associates

Agribusiness Finance & Consulting



MEMORANDUM

To: John Cain, Conservation Director
American Rivers

From: Stephen Kritscher
Kritscher & Associates

Date: March 7, 2017

Subject: Valuation Estimate – Borges/Machado Flood and Conservation Easement.

Kritscher & Associates was hired by American Rivers to negotiate easement purchase agreements with landowners located within the Paradise Cut Bypass project area. Additionally, American Rivers separately retained Bender Rosenthal to develop an estimate of value and full appraisal of the easements. Kritscher & Associates is working with Bender Rosenthal and the landowners to develop a final appraisal which will be subject to review by the California Department of General Services.

American Rivers has executed a Letter of Intent with the owners of the 1,170 acre Borges/Machado property and, at the request of Kritscher & Associates, Bender Rosenthal has offered an estimate of the value of a flood and conservation easement across the Borges/Machado property. This estimate is subject to the caveat that it is not a formal or final appraisal and as such could change as Bender Rosenthal learns more about the nature of existing easements and water rights on the property.

The easement valuation requires two separate appraisals: 1) the value of the property “as is” pre-easement and 2) the value of the property “as will be” post-easement. A formal appraisal that can pass Department of General Services Review will require market data supporting both valuation estimates.

Based on the above, Bender Rosenthal is estimating the “as is” pre-easement value of the property to be between \$11,000 and \$13,000 per acre. Additionally, they believe the current version of the flood and conservation easement represents a large majority, up to 80%, of the ‘as is’ property value. Stated differently, the remainder value of the property “as will be” post easement may be 20% of the “as is” pre-easement value.

In summary, the cost of the proposed easement is potentially 80% of the estimated fair market value, which falls within the range of \$8,800 to \$10,400 per acre. Accordingly, the total cost of the proposed easement covering all 1,170 acres of the Borges/Machado property is estimated to fall within the range of \$10,296,000 to \$12,168,000.

Bender Rosenthal is under contract and working to complete the required appraisals. As the appraisal proceeds I will continue to perform on my commitment to work with the appraisers, Mr. Borges and Mr. Machado to ensure that the appraisal is based on correct assumptions and the landowners are kept fully informed about the process. Upon completion of the appraisal, I will work with the landowners and American Rivers to complete the purchase agreement and submission of the appraisal to the Department of General Services for final review.

Stephen Kritscher

EXHIBIT 4

Acquisition Map

Proposed Paradise Cut Easement Acquisition

Exhibit 4

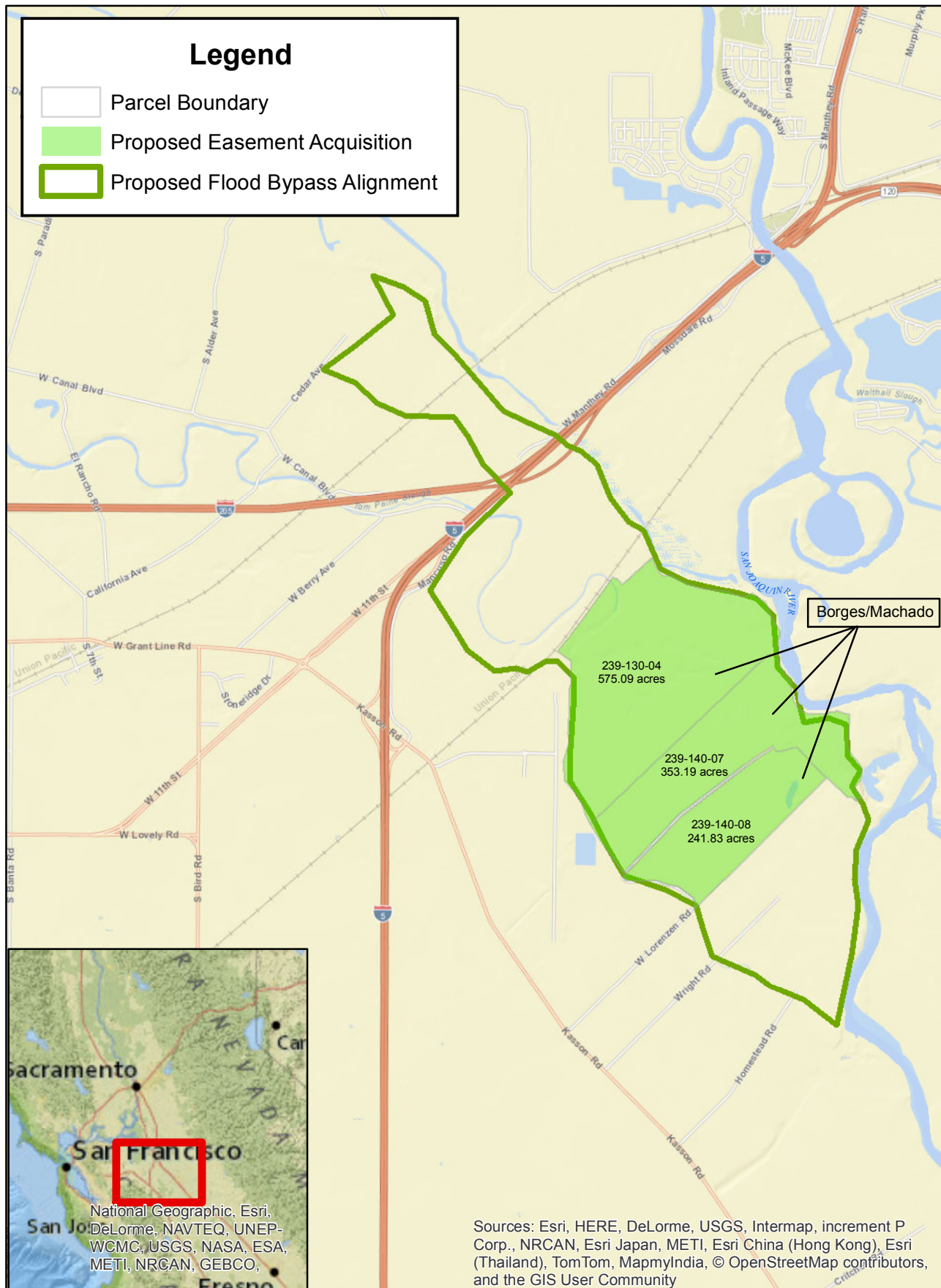


EXHIBIT 5

CEQA Compliance: RCD Board Resolution finding project exempt and Notice of Exemption filed with the San Joaquin County Clerk

RESOLUTION No. 2017- 02
OF THE BOARD OF DIRECTORS OF THE SAN JOAQUIN COUNTY RESOURCE CONSERVATION DISTRICT
FINDING THE ACQUISITION OF FLOOD AND CONSERVATION EASEMENTS
FOR THE PARADISE CUT FLOOD BYPASS EXEMPT FROM CEQA

WHEREAS, Public Resources Code § 9408 provides San Joaquin Resource Conservation District (“SJCRCD”) with authority to enter into contracts or agreements.

WHEREAS, SJCRCD has been selected to receive two-million dollars (\$2,000,000) of Proposition 1 Grant Funding to facilitate acquisition of Flood and Conservation Easements along the San Joaquin River south of Paradise Cut; the draft form of the Conservation and Flood Easement Deed and Agreement is attached hereto as Exhibit A.

WHEREAS, the Easements will not cause any change to the environment because any potential modifications to the levee and flood control system are subject to a future planning and permitting process which will be subject to complete review under California Environmental Quality Act (“CEQA”).

WHEREAS, land acquisition for habitat protection is categorically exempt from CEQA pursuant to 14 Cal. Code of Regulations sections 15313 and 15325 and easements acquired to maintain the open space character of an area are also exempt from CEQA pursuant to 14 Cal. Code of Regulations section 15317.

BE IT NOW THEREFORE RESOLVED THAT:

1. The foregoing recitals are hereby adopted as true and correct.
2. The Board has reviewed and analyzed the Conservation and Flood Easement Deed and Agreement, attached hereto as Exhibit A, and determined that the acquisition of Flood and Conservation Easements pursuant to the terms in that Agreement is an activity that is exempt from CEQA pursuant to 14 Cal. Code Regs. Sections 15317, 15313 and 15325.

Moved by Director Herrick, seconded by Director Koster, that the foregoing resolution be adopted. Upon roll call, the following vote was had:

Ayes: 5 Noes: 0 Absent: Olagaray, Wilber, Hamm

The President declared the resolution adopted.

I, Richard Rodriguez, ~~Secretary~~ ^{President} of the Board of Directors of the SAN JOAQUIN COUNTY RESOURCE CONSERVATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true, and correct copy of a resolution duly adopted at a regular meeting of the Board of Directors held the 16th of February 2017.



Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: San Joaquin County

From: (Public Agency): _____
San Joaquin County Resource Conservation District
7585 S Longe St., Stockton CA 95206

(Address)

Project Title: Paradise Cut Flood and Conservation Easement Acquisition

Project Applicant: Lead agency - San Joaquin County Resource Conservation District

Project Location - Specific:

The project is located in an unincorporated portion of San Joaquin County immediately southwest of Paradise Cut and the San Joaquin River between the cities of Lathrop and Tracy.

Project Location - City: Unincorporated Project Location - County: San Joaquin

Description of Nature, Purpose and Beneficiaries of Project:

Acquisition of flood and conservation easements for potential future flood bypass to reduce flood risk, improve habitat and maintain agricultural land and open space along the San Joaquin River south of Paradise Cut.

Name of Public Agency Approving Project: San Joaquin County Resource Conservation District

Name of Person or Agency Carrying Out Project: San Joaquin County Resource Conservation District

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: 14 CCR sections 15313, 15317, 15325
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The project involves acquisition of easements for open space and habitat. Land acquisition for habitat protection is categorically exempt from CEQA pursuant to 14 Cal. Code of Regulations sections 15313 and 15325 and easements acquired to maintain the open space character of an area are also exempt from CEQA pursuant to 14 Cal. Code of Regulations section 15317.

Lead Agency
Contact Person: Jennifer Spaletta Area Code/Telephone/Extension: (209) 224-5568

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: Jennifer Spaletta Date: 3/3/17 Title: General Counsel

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

Filed Doc #: 39-03062017-088
3/6/17 2:28 PM

Steve J. Bestolarides
San Joaquin County Clerk